

Introduction

1. The parties sell competing products that are used to inspect underground infrastructures, pipelines, and other confined areas. These products include various types of cameras, robotic crawlers, documentation software, inspection vehicles and in-line robotic pipe cutters that view, document, and repair underground infrastructure. In January 2013, Defendants posted a false Comparison Chart between their push camera and EnviroSight's on their website ("Comparison Chart," Exhibit A). More recently, Defendants transmitted an email to potential and existing customers falsely stating that that their push camera saved time over competing products ("New Product Update," Exhibit B). These false advertisements have significantly impacted the sale of EnviroSight's products. In addition to a sharp decline in push camera sales following the posting of the Comparison Chart, EnviroSight has been further damaged because its push camera was a "gateway" product, meaning that customers have historically purchased this product first before purchasing more expensive products such as crawlers and inspection trucks. Thus, EnviroSight has lost not only push camera sales, but also sales of more expensive products that flow from push camera sales. Furthermore, the EnviroSight brand has been damaged by these false advertisements because Insight indiscriminately associated the false Comparison Chart to EnviroSight in general. Accordingly, EnviroSight brings this action against the false advertising by Defendants. Plaintiff is seeking monetary damages to remedy and prevent Defendants' disparaging misrepresentations, Defendants' diversion of EnviroSight's customers and business opportunities, and EnviroSight's loss of reputation, which conduct constitutes : (a) violation of the Lanham Act, including false advertising; (b) trade disparagement; (c) unfair competition under the New Jersey Consumer Fraud Act; and (d) unfair competition under common law.

The Parties

2. Plaintiff EnviroSight is a New Jersey corporation having its principal place of business at 111 Canfield Avenue, Randolph, New Jersey 07869.

3. Defendant Insight VISION Camera Company is a corporation with its principal place of business at 600 North Dekora Woods Blvd., Saukville, WI 53080.

4. Defendant Stephen Napoleon resides at 774 Hawthorne Avenue, Cedarburg, WI 53012.

Jurisdiction and Venue

5. This Court has original subject matter jurisdiction over the claims asserted herein pursuant to 28 U.S.C. § 1331, which provides for original jurisdiction of the federal district courts in any civil action arising under the Constitution, laws or treaties of the United States, which, in this case, is 15 U.S.C. §§ 1121, 1125(a) (the Lanham Act). This court also has jurisdiction under 28 U.S.C. § 1338(a) and (b), which provide for original jurisdiction of the federal district courts in any civil action arising under any Act of Congress relating to trademarks, and in any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the trademark laws. Jurisdiction is also conferred by 28 U.S.C. § 1367(a), which provides, in any civil action of which the federal district courts have original jurisdiction, for supplemental jurisdiction over state statutory and common law claims that are so related to the federal law claims in the action that they form part of the same case or controversy under Article III of the United States Constitution.

6. This Court has personal jurisdiction over Defendant on the basis that it regularly sells products and otherwise does business in the State of New Jersey, including marketing and selling its products on its website within the State of New Jersey.

7. Venue properly lies in this judicial district pursuant to 28 U.S.C. § 1391.

Background Facts

8. EnviroSight was formed as a New Jersey limited liability company in 2002 and sells products within the United States and abroad.

9. EnviroSight is a full-service manufacturer and distributor that specializes in equipment to assist in the inspection of underground infrastructure, pipelines and confined spaces.

10. EnviroSight manufactures and sells various products that include: manhole cameras, zoom survey cameras, robotic crawlers, small pipe push cameras, specialized software, inspection vehicles, and in-line robotic pipe cutters, among others.

11. Through the use of EnviroSight's products, customers are able to safely and efficiently inspect sewer, water and storm water lines, as well as manholes, wet wells, vessels, and electrical conduit.

12. EnviroSight offers the VeriSight Pro® ("VSP") push camera which is one of its most popular purchases for first-time customers.

13. The VSP comprises a high-sensitivity PAL Imager with DSP illumination and a digital interface for recording via USB or SD/SDHC card and real-time video display via a LCD monitor to yield a very crisp and clear image.

14. More than any other product sold by EnviroSight, push camera sales are website driven. Because of this, EnviroSight has established a dedicated URL just for its push cameras.

15. EnviroSight sales data indicate that the VSP is a “gateway product” – meaning that customers usually purchase this product first before they buy higher-value products, such as the crawlers, associated software, and specialized vehicles, among others.

16. Customers of EnviroSight have come to associate a very high level of quality with the equipment sold by EnviroSight and EnviroSight has developed substantial goodwill as a purveyor of quality craftsmanship, technological innovation, applications expertise, and dependable support and training for their various pipeline and sewer inspection products.

17. Defendant Insight is a competitor of EnviroSight and markets pipeline and sewer inspection products.

18. Defendant Insight sells the VuTEK GT push camera which is comparable to EnviroSight’s VSP.

Defendants’ Comparison Chart

19. Defendant Insight is falsely advertising that the EnviroSight products are inferior to the Defendant Insight products.

20. Specifically, in August 2014, EnviroSight became aware of Defendant Insight’s online advertisement, the “Comparison Chart” (see Exhibit “A” attached), that falsely compared Defendant Insight’s VuTEK GT push camera to EnviroSight’s VSP push camera with the question “How do you look for features that separate one camera from the other?” in the title. The Comparison Chart also featured a rendering of EnviroSight’s VSP product that was illegally copied from the EnviroSight website.

21. This Comparison Chart was prominently located on Insight’s website under the VuTEK GT system tab for over eighteen months.

22. In addition, this Comparison Chart was hyperlinked to other Defendant Insight products sold on their website, including the crawlers and software systems. Indeed, prospective customers merely needed to click the “compare” button on the website to view the inaccurate and misleading Comparison Chart of the push cameras.

23. Defendant Insight’s Comparison Chart made a number of claims about EnviroSight’s product that are literally false and/or have a tendency to mislead the audience of current or prospective purchasers.

24. By way of example, the Comparison Chart states that Defendant Insight’s push camera has a “clear picture with crisp definition” and a “High Def. Picture” and that EnviroSight’s product does not. This is literally false and/or has the tendency to mislead prospective purchasers because EnviroSight’s push cameras provide a crisp and clear image. Indeed, the image of EnviroSight’s VSP push camera is clearer than that of Defendant Insight’s push camera.

25. The Comparison Chart also states that Defendant Insight’s push camera “display EASY connection” and that EnviroSight’s product does not. This is literally false and/or has the tendency to mislead prospective purchasers because EnviroSight’s push cameras have an easy display connection. Indeed, Defendant Insight’s display connection is more difficult because it involves an extra step. Furthermore, EnviroSight’s product has always had a convenient “curly” style cord, but Defendant Insight just debuted its curly cord over the summer, more than a year after the Comparison Chart was posted.

26. The Comparison Chart also states that Defendant Insight’s push camera features an “EASY BUTTON recorder” and that EnviroSight’s product does not. This is literally false and/or has the tendency to mislead prospective purchasers because EnviroSight’s push

camera recorder features a self-contained system and actually requires fewer steps than Defendant Insight's to operate.

27. The Comparison Chart also states that Defendant Insight's push camera features "USB Format Records" and that EnviroSight's product does not. This is literally false and/or has the tendency to mislead prospective purchasers because EnviroSight's product can record to USB media, in addition to other media formats.

28. Lastly, the Comparison Chart also states that EnviroSight does not have "LIVE PERSONAL service" and does not provide "help quickly." This is literally false and/or has the tendency to mislead prospective purchasers because EnviroSight offers its customers live and personal telephone support, in addition to in-person support at any regional dealer within EnviroSight's national network, as well as EnviroSight's New Jersey headquarters.

29. The Comparison Chart was posted on or about January 2013 on Defendant Insight's website.

30. Although sales of the VSP push camera initially increased 25-35% annually after the product was introduced in 2011, sales declined sharply in 2013 after the Comparison Chart was posted.

31. On or about August 2014, Defendant Insight changed the content of the Insight Website to remove the Comparison Chart after being contacted by EnviroSight.

32. EnviroSight suffered irreparable harm and damage to its sales and reputation as a result of the false advertisement posted on Insight's website for over nineteen months.

Defendants' Marketing E-mail

33. On or about September 30, 2014, Insight sent an advertisement via e-mail ("E-mail") titled "New Product Update."

34. This E-mail states that “[w]ith our system, studies shows that you will save approximately 50% of the time inspecting that our intuitive and integrated system has to offer verse the other systems” [sic].

35. This E-mail is literally false and/or has the tendency to mislead prospective purchasers because there is no support or basis for the studies that were allegedly completed to support this finding. Furthermore, based on information and belief, Defendant Insight neither performed nor possesses any said “studies” that support its claim.

36. Envirosight suffers irreparable harm and damage to its sales, reputation and goodwill as a result of this false advertisement that was widely circulated via e-mail to prospective customers.

COUNT ONE
FALSE ADVERTISING IN VIOLATION OF LANHAM ACT § 43(a)
Envirosight v. Insight

37. Paragraphs 1 through 36 of this Complaint are incorporated herein by reference as if set forth in full.

38. The foregoing conduct by Defendant Insight, and in particular Defendant Insight’s Comparison Chart posted on their website and the E-mail, made false and misleading statements to Envirosight’s current and prospective customers regarding Envirosight’s product and constitutes false advertising in violation of Lanham Act § 43(a).

39. Defendant used words in their advertising to misrepresent the nature, characteristics, and qualities of the products being sold by Envirosight in comparison to Defendant Insight’s product.

40. Defendant Insight’s statements actually deceive and have the tendency to deceive a substantial segment of the intended audience.

41. The deception created from Defendant Insight's false statements is material, in that it is likely to influence the purchasing decisions of EnviroSight's current and prospective customers.

42. Defendant Insight has caused their false statements to enter interstate commerce.

43. As a direct consequence of this illegal conduct on the part of Defendant Insight, EnviroSight has suffered and will continue to suffer irreparable harm and loss, financial injury, and loss and damage to EnviroSight's business.

WHEREFORE, the Plaintiff requests judgment in its favor and against Defendant Insight for compensatory and consequential damages, including lost sales, damages to their reputation and goodwill, attorneys' fees (as allowed by law), interest, costs of suit, punitive damages, and such further relief as the Court deems just and appropriate.

COUNT TWO
TRADE DISPARAGEMENT
EnviroSight v. Insight

44. Paragraphs 1 through 43 of this Complaint are incorporated herein by reference as if set forth in full.

45. Defendant Insight knew its communications to customers and prospective customers, including, but not limited to the Comparison Chart and E-mail, alleging that EnviroSight's products were inferior to Defendant Insight's products was false.

46. Defendant Insight intended these false advertisements to cause financial loss or reasonably should recognize that the publication would result in financial loss.

47. As a direct consequence of this illegal conduct on the part of Defendant Insight, EnviroSight has suffered and will continue to suffer irreparable harm and loss, financial injury, loss and damage to EnviroSight's business and reputation.

WHEREFORE, the Plaintiff requests judgment in its favor and against Defendant Insight for compensatory and consequential damages, including lost sales, damages to their reputation and goodwill, attorneys' fees (as allowed by law), interest, costs of suit, punitive damages, and such further relief as the Court deems just and appropriate.

COUNT THREE
UNFAIR COMPETITION UNDER N.J.S. §56:8-1 et seq.
EnviroSight v. Insight and Stephen Napoleon

48. Paragraphs 1 through 47 of this Complaint are incorporated herein by reference as if set forth in full.

49. Defendant Insight's product, VuTEK GT® push camera, is a direct competitor of EnviroSight's product, the VSP, in the field of sewer and pipeline push camera systems.

50. Defendants Insight and Stephen Napoleon have made false and misleading statements, including those set forth above in the Comparison Chart and the E-mail, to EnviroSight's prospective customers regarding EnviroSight's product.

51. Defendants Insight and Stephen Napoleon disparaged EnviroSight's product and reputation by false representation of fact through statements, including those set forth in the Comparison Chart and the E-mail.

52. The Comparison Chart was prominently posted on Defendant Insight's website in multiple locations for a period of over eighteen months.

53. Defendant Stephen Napoleon, as President of Defendant Insight, knew, should have known, or acted with a reckless disregard, as to Defendant Insight's false advertisements,

because, among other reasons, the Comparison Chart was prominently posted on Defendant Insight's website for over eighteen months as mentioned above; based on information and belief, the website is critical to Defendant Insight's marketing because website-initiated inquiries are the principal driver for push camera sales; and, based on information and belief, Defendant Insight is a small company with only about twelve employees, thus, Defendant Napoleon, as President of Defendant Insight, has an intimate understanding of the sales and marketing of the company including its website.

54. Defendants Insight and Stephen Napoleon intended or reasonably should have recognized that those statements would result in harm to EnviroSight.

55. The deception created from Defendants' false statements is material, in that it is likely to influence the purchasing decisions of EnviroSight's current and prospective customers.

56. Defendants have engaged in unfair competition in connection with the sale or advertisement of EnviroSight's product as defined in New Jersey Statutes 56:8-1 *et seq.*

57. Defendants' conduct was willful and intentional.

58. As a result of Defendants' conduct, EnviroSight suffered immediate and irreparable harm.

WHEREFORE, the Plaintiff requests judgment in its favor and against Defendant Insight and personally against Stephen Napoleon for compensatory and consequential damages, including lost sales, damages to their reputation and goodwill, attorneys' fees (as allowed by law), interest, costs of suit, punitive damages, and such further relief as the Court deems just and appropriate.

COUNT FOUR
COMMON LAW UNFAIR COMPETITION
Envirosight v. Insight

59. Paragraphs 1 through 58 of this Complaint are incorporated herein by reference as if set forth in full.

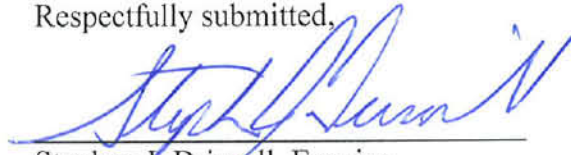
60. On information and belief, Defendant Insight made false and baseless statements concerning Envirosight's product in the Comparison Chart and in the E-mail that were directed to current and prospective customers.

61. As a direct consequence of Defendant Insight's conduct, Envirosight has suffered and will continue to suffer irreparable harm and loss, financial injury, loss and damage to Envirosight's business.

62. Defendant Insight's actions were willful and intentional, entitling Envirosight to the award of punitive damages.

WHEREFORE, the Plaintiff requests judgment in its favor and against Defendant Insight for compensatory and consequential damages, including lost sales, damages to their reputation and goodwill, attorneys' fees (as allowed by law), interest, costs of suit, punitive damages, and such further relief as the Court deems just and appropriate.

Respectfully submitted,



Stephen J. Driscoll, Esquire
NJ ID No. 004481994
SAUL EWING LLP
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102-2186
Telephone: 215-972-8562
Facsimile: 215-972-1835
Email: sdriscoll@saul.com

Ryan L. DiClemente, Esquire
NJ ID No. RD3671
SAUL EWING LLP
650 College Road East, Suite 4000
Princeton, NJ 08540-6603
Telephone: (609) 452-5057
Facsimile: (609) 452-6117
Email: rdiclemente@saul.com

Dated: October 21, 2014

EXHIBIT “A”

INTERNET ARCHIVE
WayBackMachine

http://www.insightvisioncameras.com/features/comparisonchart/index.html

Go
DEC
JAN
MAY
Close
MATION
1
2012
2013
2014
Help

4 captures
1 Jan 13 - 12 Jul 14

800-488-817

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COMPARISON CHART

Home [Comparison Chart](#)

- Features
- Designs
- Comparison Chart
- Parts & Accessories
- Lease Application

COMPARISON CHART

"How do you look for features that separate one camera from the other? "



SPECIFICATIONS

- Clear picture with crisp definition
- Display is light, portable and easy to carry
- PUSH rod rugged yet flexible
- Battery powered
- Display EASY Connection
- EASY BUTTON recorder
- USB Format Records
- System looks professional
- LIVE PERSONAL service
- LOW cost repairs
- PERSONALIZED SUPPORT

Insight VISION	Ridgid	Envirosight
YES (High Def. Picture)	YES	NO
YES (carrying easy)	YES	YES
YES (less break downs)	YES	YES
YES (works anywhere)	NO	YES
YES (quick setup)	YES	NO
YES (less messing around)	YES	NO
YES (plays videos easily)	YES	NO
YES (customer trust)	NO	NO
YES (get help quickly)	NO	NO
YES (keeps costs down)	NO	YES
YES (help you solve issues)	NO	YES



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INTERNET ARCHIVE
Wayback Machine

4 captures
1 Jan 13 - 12 Jul 14

Go

DEC JAN MAY Close

2012 2013 2014 Help



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EXHIBIT “B”

Driscoll, Stephen J.

Subject: FW: New Product Update - NEW Advanced Inspection Equipment

From: Driscoll, Stephen J.

Sent: Friday, October 03, 2014 9:50 AM

To: Driscoll, Stephen J.

Subject: FW: New Product Update - NEW Advanced Inspection Equipment

From: Insight | VISION - New Product Updates. [<mailto:bob@insightvisioncameras.com>]

Sent: Tuesday, September 30, 2014 11:35 AM

To:

Subject: New Product Update - NEW Advanced Inspection Equipment



insight | VISION

ADVANCED INSPECTION EQUIPMENT

1-800-488-8177

BOB MASSE, Sales Manager
bob@insightvisioncameras.com

www.insightvisioncameras.com



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Internal Battery

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New Product Upgrade

ADVANCED INSPECTION EQUIPMENT

Insight | VISION develops professional-grade inspection equipments with powerful, time-saving features for all our customers. Our systems includes industry advanced performance that will allow our customers with the ease of use, advanced data collection options and displays vital information on screen. Why is that important? With our system, studies shows that you will save approximately 50% of the time inspecting that our intuitive and integrated system has to offer verse the other systems.

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